

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jeffrey D. Miller,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1192
Parcel No. 070/01062-000-000

On March 7, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Jeffrey D. Miller, was self-represented and requested the appeal take place by telephone. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco Jr. as its counsel and also participated by telephone. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Jeffrey D. Miller, owner of residential property located at 4003 8th Place, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2011, assessment and valued at \$78,000; representing \$17,500 in land value and \$60,500 in dwelling value.

Miller protested to the Board of Review on the ground the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). The Board of Review denied the protest because, "market data indicates that the property is assessed at fair market value."

Miller filed his appeal with this Board on the same ground. Miller claimed \$45,000, representing \$10,100 in land value and \$34,900 in improvement value, is the actual and fair market value for his property.

The subject property consists of a one-story, metal-sided dwelling having 860 square feet of living area and built in 1914. The subject property has a 440 square-foot detached garage and is considered to be in above-normal condition. It has 40% physical depreciation and has below average quality grade (5+10). The property has two bedrooms and one bath and is estimated at 0.152 acres.

Miller submitted evidence regarding the purchase price of the subject property for \$45,000. Miller testified the Code states that a property's sale price or sales of comparable property in normal transactions can be used to arrive at market value. He believes his purchase price on January 7, 2011, is the best evidence that the property is over-assessed.

Miller believes the Board of Review's decision was incorrect. The Appraiser Analysis in the certified record indicated the sale was abnormal and referred to the sale as an estate transaction. Miller provided evidence that the sale took place between one individual, Michael C. McClavy, and himself. He also provided the real estate listing and his sales agreement as evidence.

Miller's position is that the sale price should be the only proof needed to show the property is over-assessed. Miller also believes the property is not in above-normal condition as indicated. Miller testified there was an appraisal for the sale of the property. However, Miller refused to supply the appraisal or testify to the appraised value. Miller did state the appraisal was for more than the purchase price.

The Board of Review did not submit any additional evidence. However, in his closing argument, Assistant Attorney Ralph Marasco made a "professional statement" regarding data in the certified record. Marasco also tried to testify under a "professional statement" regarding data of other sales he located the day before the hearing. This Board excluded the additional evidence. If the Board

of Review desires to produce additional evidence or witness testimony, it needs to follow proper procedure. Iowa Admin. Code r. 701-71.21(29)(d).

Reviewing the record, we find Miller's sale to be an arms-length transaction, and the Appraisers Analysis to be incorrect. However, a concern of this Board is that Miller refused to submit or testify to the appraisal value. Although the sale can be an indication of the actual value, it may not be conclusive. Although Miller's purchase price may indicate the property could be over-assessed, insufficient evidence has been presented to support this assertion especially considering Miller's admission that the appraisal arrived at a value greater than the purchase price. Therefore, we affirm the assessment.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or

comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, “other factors” may be considered in arriving at market value. § 441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

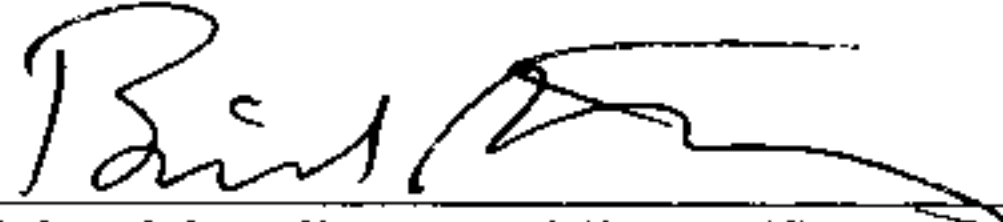
We think it is clear from the wording of section 441.21(1)(b) that a sales price for the subject property in a normal transaction just as a sales price of comparable property is a matter to be considered in arriving at market value but *may not conclusively* establish that value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). A sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Miller provided evidence of the sales price of the subject property. However, he also admitted an appraisal done for the purchase of the property concluded a higher value, and he refused to provide the appraisal. Miller’s sale price alone fails to convince this Board that it is the correct market value.

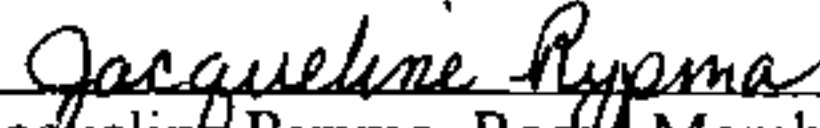
Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Miller’s claim of over assessment as of January 1, 2011. We, therefore, affirm the Miller property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$78,000, representing \$17,500 in land value and \$60,500 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Miller property located in Des Moines, Iowa, as determined by the Polk County Board of Review is affirmed.

Dated this 1st day of May 2012.



Richard Stradley, Presiding Officer



Jacqueline Rypma, Board Member



Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-1</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	